

**St. Mary's Medical Center, Employer/Petitioner  
and International Union of Operating Engi-  
neers, Local No. 70. Case 18-UC-308**

January 28, 1997

**ORDER DENYING REVIEW**

BY MEMBERS BROWNING, FOX, AND HIGGINS

The National Labor Relations Board, by a three-member panel, has considered the Employer's request for review of the Regional Director's Decision and Order (pertinent portions of which are attached as an appendix). The request for review is denied as it raises no substantial issues warranting review.

The Employer seeks to exclude its recently created position of working chef from the certified and contractual service and maintenance unit, arguing that the position falls within an exclusion in the contractual recognition clause for "positions requiring 600 hours or more of formal training, education, or apprenticeship."<sup>1</sup> The Regional Director deferred to an arbitrator's interpretation of that contract clause that the "600 hours" provision did not apply to the Employer's food service workers.<sup>2</sup> The Regional Director further independently determined, applying the community-of-interest test, that the working chef should be accreted to the existing unit. The Employer contends that the working chef classification falls within the express exclusion and that the Regional Director erred in deferring to the arbitrator's interpretation of the recognition clause. The Union does not dispute that the working chef position requires 600 hours or more of training but argues that the 600-hour requirement does not apply to food service positions.

We agree with the Regional Director's clarification of the unit to include the newly created position of working chef. Although the Board only infrequently defers to arbitration in representation proceedings, the Board will find deferral appropriate when the resolution of the issue turns solely on the proper interpretation of the parties' contract. See *Hershey Foods Corp.*, 208 NLRB 452, 457 (1974). Where resolution turns on statutory policy, the Board will not defer. *Marion Power Shovel*, 230 NLRB 576 (1977).

Here, consistent with Board law, the Regional Director limited the scope of his deferral to the issue

which turned solely on contract interpretation—the meaning of the "600 hour" exclusion language of the recognition clause. The Regional Director explicitly refused to defer resolution of the accretion issue but resolved that issue through an independent analysis.

The arbitrator's finding that the "600-hour" exclusion language was not meant to apply to the Employer's food service workers and could not be a basis for excluding the working chef is a reasonable interpretation of the relevant contractual language. The arbitrator based his decision on evidence presented at the arbitration hearing showing that it has been the Employer's practice to staff the unit's food service worker grade II position with individuals having in excess of 600 hours of formal training, education, or apprenticeship, and because another provision in the contract (sec. 1.3) contemplates the inclusion of any new job which is of the type and character comparable to jobs being filled by unit employees.

The Employer's claim that the community of interest standard is inapplicable is based solely on the Employer's contention that the working chef was excluded under the "600 hour" provision and otherwise is not an attack on the Regional Director's accretion analysis. Indeed, the Employer concedes that the working chef's job is similar to bargaining unit positions. Accordingly, we agree with the Regional Director's clarification of the unit to include the newly created position of working chef.

**APPENDIX**

**REGIONAL DIRECTOR'S DECISION AND ORDER**

2. The Employer, contrary to the Union, seeks to exclude from the certified unit the position of "working chef."

The Employer, the Union, and the Union's predecessors have engaged in collective bargaining for many years. In a collective-bargaining agreement effective April 1, 1989, until March 31, 1992, between the Employer and one of the Union's predecessors, the Employer agreed to recognize the predecessor as the exclusive collective-bargaining representative of "all regular full-time and all regular part-time employees in the classifications of Food Service Worker Grade I, Food Service Worker Grade II . . . excluding all other employees of the Medical Center, students or other part-time persons who work afternoon and weekend relief, and positions requiring 600 hours or more of formal training, education or apprenticeship." The recognition language was carried forward in that predecessor's second agreement with the Employer and is in the current agreement with the Union which is effective April 1, 1995, through March 31, 1999.

The Employer established a working chef position in about January 1995 and designated it nonunit. The job description for the position includes a requirement that the working chef be a graduate of a technical school cooking course with 1-year work experience.

On about January 11, 1995, the Union's predecessor filed a grievance seeking to include the newly created position of working chef in the existing bargaining unit. Following its

<sup>1</sup> The certified unit is defined as: all regular full-time and all regular part-time employees in the classifications of food service worker Grade I, food service worker Grade II [other service and maintenance classifications], excluding RNs, LPNs, employees currently represented by the Union, students, positions requiring 600 hours or more of formal training, education or apprenticeship, and all other employees of [Employer]. Similar language was used in the contracts between the Union's predecessor and the Employer and was in the Union's certification based on the stipulated election agreement.

<sup>2</sup> The Union's predecessor filed a grievance on January 11, 1995, seeking to include the working chef in the unit.

certification on February 3, 1995, in Case 18-RC-15711, the Union continued the grievance. The grievance was arbitrated, and, on July 18, 1996, the arbitrator issued his Opinion and Award, in which he found that the position of working chef was properly included in the bargaining unit and was covered by the collective-bargaining agreement. On July 29, 1996, the Employer filed the petition herein, seeking to exclude the working chef from the unit. The Employer contends that the inclusion or exclusion of the working chef is a unit determination issue that is properly decided by the Board, and not by an arbitrator; and that the arbitrator's decision is inconsistent with the certification, as the certification excludes positions requiring 600 or more hours of formal training, education or apprenticeship, which qualifications the Employer established for the working chef position by requiring that the working chef be a graduate of a technical school with 1-year work experience. The Union, on the other hand, contends that the 600-hour training requirement in the contract does not apply to food service positions.

In about February 1995, Scott Brinker was selected to be the working chef. The job functions of the position include directing activities in the food production areas; training and orienting new cooks in culinary technique; assisting in performing performance appraisals; performing large- and small-scale cooking, baking and food preparation; and other identified assignments.

The Employer agrees that the working chef spends approximately 70 percent of his time (the Union maintains the percentage is as high as 90) performing duties similar to duties performed by unit food service employees. The parties agree that the working chef and some of the unit food service employees share a common supervisor and that the working chef and the male unit food service employees wear a similar uniform. Additionally, the parties agree that the working chef works in the same production area as the unit food service employees when he is performing production

tasks. The working chef's hours are 9 a.m. to 5:30 p.m., and, while the unit food service employees have different starting and ending times for their shifts, there is some overlap in hours they are together. It does not appear that either party contends that the working chef is a supervisory or managerial position.

In his Opinion and Award, the arbitrator has interpreted the contract language on the 600-hour training, education, or apprenticeship requirement as not applying to food service positions involving production of food and training of new employees. I am not relying on the arbitrator's decision with regard to unit placement, but I am relying on his interpretation of the contract language with regard to the 600-hour training requirement. It is well settled that matters of accretion and appropriate units are decisions for the Board rather than an arbitrator, as they involve application of statutory policy and are not dependent upon contract interpretation.<sup>2</sup> Therefore, the issue before the Board is whether the newly created position of working chef shares a sufficient community of interest with the rest of the unit in order to constitute an accretion to the unit.<sup>3</sup>

On the basis of the foregoing, I conclude that the working chef shares a close community of interest with the unit employees, which warrants his inclusion in the unit. In reaching this conclusion, I have relied particularly on the facts that he works with unit employees and spends at least 70 percent of his worktime performing similar work. Additionally, I note that the working chef shares a common supervisor, uniform, work location, and certain hours of work with some of the unit employees.

In these circumstances, I shall clarify the unit to specifically include the working chef.

<sup>2</sup> *Carr-Gottstein Foods Co.*, 307 NLRB 1318 (1992); and *Williams Transportation Co.*, 233 NLRB 837 (1977).

<sup>3</sup> *Brunswick Corp.*, 254 NLRB 1120 (1981).